

***United States Court of Appeals
for the Second Circuit***



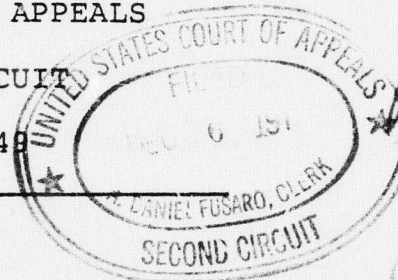
**APPELLEE'S
APPENDIX**

77-6149

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 77-6149



SOLOMON COOPER,

Appellant,

- against -

CIVIL SERVICE COMMISSION, APPEALS
REVIEW BOARD,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

APPELLEE'S APPENDIX

DAVID G. TRAGER,
United States Attorney,
Eastern District of New York

PAGINATION AS IN ORIGINAL COPY

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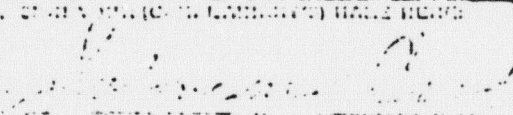
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76C 1053

COOPER vs US CIVIL SERVICE COMMISSION

DATE	NR.	PROCEEDINGS	
			<u>A</u> 1
6-8-76		By NEAHER, J. - Order dtd 6-7-76 permitting platff to proceed in forma pauperis filed.	(1)
6-8-76		Complaint filed. Summons issued.	(2)
6-10-76		Summons ret. and filed/ executed.	(3)
8-12-76		By PRATT, J.=Stip: dtd 8-11-76 extending def'ts time to answer to 9-21-76 filed.	(4)
9-20-76		Notice of motion ret. 10-15-76 with memo of law to dismiss filed.	(5/6)
9-30-76		Pltff's rejoinder to defts motion to dismiss filed.	(7)
12-10-76		Before PRATT, J Case called. Motion to dismiss adj'd to 1-13-77.	
12-27-76		Letter dtd 12-23-76 to J. Pratt from SolCooper re pltff's rejoinder. (	
1-13-77		Before PRATT, J.- Case called for motion to dismiss and adjd to 1-27-77	
2-18-77		Before PRATT, J.- Case called for xxxxx defts motion to dismiss Hearing ordered and begun. Decision reserved.	
8-26-77		By Pratt, J.- Memorandum and order dtd 8-25-77 granting def't's motion pursuant to FRCP 12(b) and dismissing Plntff's complaint filed. (9)	
8-26-77		Copies mailed to parties.	
8-26-77		Letter dtd 12-15-76 from AUSA Hoffman to J.Pratt renewing motion to dismiss (filed on 9-20-76) filed.	(10)
8-26-77	896	Judgment dtd 8-26-77 that the defendant's motion pursuant to FRCP 12(b) is granted and that the complaint is dismissed filed.	(11)
9/1/77		Notice of appeal filed. Certified copies of docket entries mailed to C of A. jlj	(12)
9/15/77		By Pratt, J order dtd 9/13/77 filed re leave to proceed in forma pauperis. jj	(13)
9/22/77		Civil appeal scheduling order that the record on appeal be filed on/or before 10/11/77 etc. jj	(14)
10/5/77		Acknowledgement rec'd from C of A for index & record on appeal & filed.	(16)
12/1/77		Stenographers transcript dated 2/18/77 at 3:00 p.m. filed. tk	(17)
12/1/77		Civil service commissions appeal of pltff filed. t k	(18)
12/12/77		IRS Report of investigation filed. t k	(19)

U.S. DEPARTMENT OF JUSTICE FEDERAL BUREAU OF INVESTIGATION			2	
1. WHAT IS YOUR FULL NAME (Last, first, middle initial)?			2. WHAT IS YOUR TELEPHONE NUMBER INCLUDING AREA CODE IF YOU KNOW IT?	
1st Officer			257 4600	
3. YOUR STREET ADDRESS (OR RD NUMBER OR POST OFFICE BOX NUMBER)			HOME PHONE:	
One Lincoln Place, Bklyn, N.Y. 11206			212 267 4600	
YOUR CITY STATE ZIP CODE			WORK PHONE:	
4. WHICH FEDERAL OFFICE DO YOU BELIEVE DISCRIMINATED AGAINST YOU? (Prepare a separate complaint form for each office.)			4. ARE YOU NOW WORKING FOR THE FEDERAL GOVERNMENT?	
Internal Revenue Service, Bklyn			☐ YES (ANSWER A, B, C AND D BELOW) ☒ NO (CONTINUE WITH QUESTION 5.)	
A. NAME OF OFFICE WHICH YOU BELIEVE DISCRIMINATED AGAINST YOU:			A. NAME OF AGENCY WHERE YOU WORK:	
Internal Revenue Service			DISCRIMINATED	
B. STREET ADDRESS OF OFFICE:			B. STREET ADDRESS OF YOUR AGENCY:	
35 Walling Street			JUL 21 1975	
C. CITY STATE ZIP CODE			C. OFFICE Revenue Service ZIP CODE	
Bklyn, N.Y. 11201			Equal Employment Opportunity Officer	
D. NAME AND TITLE OF PERSON(S) YOU BELIEVE DISCRIMINATED AGAINST YOU (If you know):			D. WHAT IS THE TITLE AND GRADE OF YOUR JOB?	
I do not know				
5. DATE ON WHICH MOST RECENT ALLEGED DISCRIMINATION TOOK PLACE:			6. CHECK BELOW WHY YOU BELIEVE YOU WERE DISCRIMINATED AGAINST. BECAUSE OF YOUR:	
Currently			☐ RACE, IF SO, SHOW YOUR RACE _____ ☐ COLOR, IF SO, SHOW YOUR COLOR _____ ☐ RELIGION, IF SO, SHOW YOUR RELIGION _____ ☐ NATIONAL ORIGIN, IF SO, SHOW YOUR NATIONAL ORIGIN _____ ☐ SEX, IF SO, STATE YOUR SEX _____ ☒ Age	
MONTH	DAY	YEAR		
7. EXPLAIN HOW YOU BELIEVE YOU WERE DISCRIMINATED AGAINST (TREATED DIFFERENTLY FROM OTHER EMPLOYEES OR APPLICANTS) BECAUSE OF YOUR RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN. (You may continue your answer on another sheet of paper if you need more space.)				
Subsequent to my having established my eligibility with a rating of 83.4 on the Junior Federal Assistant Examination given on June 6th, 1973, I was phoned by Western Union and informed that a "Religion" had been sent me, on September 27th, 1973, by The Internal Revenue Service with respect to employment by them. And, in response, I signed the said coupon and made an appointment and had an interview.				
8. (a) I HAVE DISCUSSED MY COMPLAINT WITH AN EQUAL EMPLOYMENT OPPORTUNITY COUNSELOR (See Instructions):			8. (b) NAME OF COUNSELOR:	
☒ YES ☐ NO			Manuel H. Rojas	
9. WHAT CORRECTIVE ACTION ARE YOU SEEKING?				
My being given the position I was denied and the payment of all salaries this denial deprived me of.				
 JUL 16 1975				
10. DATE OF THIS COMPLAINT			11. SIGN AND PRINT NAME OF PERSON MAKING COMPLAINT	
MONTH	DAY	YEAR		
JUL	14	1975	 Manuel H. Rojas	

SEE INSTRUCTIONS ON REVERSE FOR FURTHER INFORMATION.

Complaint of Discrimination in The Federal Government - Item 7 cont'd
on October 1st, 1973.

The interviewees were a panel of three one of whom was very obviously older than I. The burden of the interview, if it can be said to have had any legitimate objective was, to all appearances, was to elicit and/or instill a distinct disaffection on my part with the duties the job would entail. It was depicted in the most discouraging and undesirable light for the purpose, as I saw and still see it, of inducing me to decline it.

Irate taxpayers, I was told, would direct their spleen at me and was abusive, threatening and profane. Would I, I was asked find that tolerable. I replied that I thought that I could take it, having met kindred situations in my career as a salesman.

I was told that I would have to undergo a six-month training period, and would I object to that. And, I replied that, no, I would not. I was asked if I had studied accounting or had any bookkeeping experience or knowledge. Remarking that the announced job-qualifications did not call for that knowledge or experience, I answered that I did not have it.

This, to the best of my recollection, was the gist of the interview. It, it is my complaint herein, in no way determined or sought to determine my capacity to perform the basic routines, which I surmise would constitute 95 to 98% of the job. And for which, the conclusion is inescapable, the six-month training period would designedly and adequately prepare me.

And, consequently, I submit herein, the only determination the interviewing panel had the right to, and of right should have, made was that of my learning potential with respect to the training program. Their weighing of the likelihood of my being brought to the requisite competence by the schooling, I repeat, would fall within their function. But only if I had given them unmistakable evidence of failure in this regard would they have had cause to frown on my candidacy. Nonetheless there was nothing in their questioning which indicated they were exploring this angle.

But the Civil Service Examination itself was a determination of my potential. And unless they had substituted their own subjective judgment, whether individual or collective, they had no legitimate basis for rejection. The examination I had passed, I submit, was an impartial, unbiased and objective measure of my competence; and it is incumbent on the agency to so regard it. And to ignore it, or to overrule it, or to set it aside is, indeed, a very suspicious maneuver!

On the conclusion of the interview, I asked if it would be long before I heard from them. They assured me that I would hear from them in a very short time. As of this writing, I still haven't heard. And that is why I consider this complaint, "current."

On November 30th, 1973, I received a Mailgram from Internal Revenue - the actual Mailgram this time, not a phone call - asking to determine my interest in a "Temporary Appointment" as a "Tax-Preparer Service Clerk GS-4." I replied that I was and I subsequently was interviewed on December 6th, at 1:30 P.M. by a panel of two this time. A man in his 40's and a woman, in my estimation around 70. This interview I can only describe as a farce. Question: Would I go to school for two weeks? Answer: "Yes." (The school it now turns out is only "technically" in Long Island, since it is a few short blocks from the Queens border and within easy walking distance of the last subway stop in Queens.) And the woman member of the panel, anxious not to be mistaken for a dummy, piped up with her sole question of the interview, would I take graft? Answer: "No." The rest of the interview was taken up with my explaining, at his request, of the panel, how come "cheer" posture had been given it's perhaps unwarranted appellation. (My most recent experience had been in essential oils, and this made him feel, I suppose, I could comment on the subject as an expert.)

to the man

No questions this time about income, owning taxpayers, or courses in accounting. Nor for that matter now a one that might enable the interviewers to glean any further insight as to my capability or potential beyond that putatively discovered by the civil service examination. All of which impels me to herein submit that the elderly members of both panels were there explicitly to serve one purpose, and one purpose only - that of a showcase, a smokescreen and a suspicion-alloyer!

About a month later, on December 27th, I received a Memorandum letter advising me - by means of an "x" in the appropriate box, No. 6 in this instance - "in reply to the inquiry contained in your communication we regret to inform you that you were not selected for the position for which you applied."

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Which position? It didn't say! So I called Internal Revenue seeking clarification from Mr. Romagosa, "Chief, Personnel Branch," whose name appeared as signatory of this peripatetically lucid communication. But Miss Costello, who answered the phone at the number given, refused to put me through to him. Miss Costello and I had had prior communication with each other (I had called her several times seeking to determine the status of my application and never got from her any definite answer). And, as a result, she appeared to be at no great pains in concealing from me the fact that she regarded me as a pest. She insisted on knowing what my purpose was in seeking to speak with Mr. Romagosa. And I explained that I had had two interviews and the breakdown they had sent me didn't indicate which job I was being rejected for. She said she was "positive" it was for the temporary one. At which I asked her how about the other, permanent one. She said, "If you haven't heard, then it is still open." Since I haven't heard to this day, I must assume that "it is still open."

So matters stood, until on May 14th, 1975 I read in The New York Times that the Equal Employment Opportunity Commission had paroled the New York Telephone Company for its practices with

request to equal opportunity for their employees. In a recrudescence of my long-standing outrage at the discriminatory treatment I had received at the hands of Internal Revenue I clipped the article from the Times and enclosed it with a letter to the WABC asking, in effect, whether the Internal Revenue Service was free to do what is prohibited to the Phone Company.

As a result of that letter -- through a series of referrals -- I was contacted by a Mr. Manuel H. Rojas, "Brooklyn District." Both on the phone and during a subsequent visit I detailed to him the claim heretofore set forth. He advised me that he could find no record in Internal Revenue's files of my original interview, the one for career-permanent appointment; although he had found the papers covering my second interview, the temporary one. I indicated to him that I thought it very strange that there should be no papers at all in reference to the first interview -- all the way from the originating Mailgram right through to the "Personnel Folder" I was given with its included form that I made out and the rejection or non-rejection that never materialized. Mr. Rojas assured me that his search was continuing, and that he expected, sooner or later, to find it. And, that he was going personally to the Civil Service Commission to try to find out their certification of me to Internal Revenue.

The lack of the record, however, in no way deterred him from informing me that I had no leg to stand on. His job, he pursued, was to find if any "patterns" of discrimination existed. And since Internal Revenue had and has in its employ people older than I, there is no "pattern" and therefore there can be no discrimination. I pointed out the fallacy of this "logic," and was told that this was the extent of his responsibility. But he was going ahead and dig up the record and he'd be in further touch with me on acquiring it. He called me on the phone about ten days later and weakly repeated his prior statement as to the non-existence of "patterns" with its entailing non-existence of discrimination. I asked him if he had found the record and I received no answer. The rejoinder being a mumbled reminder that I could appeal his ruling. I urged that I would be in a better position to do so if I had the record and could be specific. He answered that he would send me the material. But all I received was the form herewith and a covering letter repeating his oral statement and the name of the person to whom to address the appeal.

I submit, in this appeal, that without the support of the actual record -- missing indeed under very suspicious circumstances -- Internal Revenue's high-handed dismissal of my claim based, as it is, on fallacious argumentation, specious generalization and arbitrary and dissimulating criteria amount, or should I say reduce to?, a sole contender. Call it what you will. The issue has been side-stepped and evaded and not, I repeat NOT, faced up to and not head on and disposed of judicially and even-handedly.

Need I point out that the fact that Internal Revenue employs

some people who are older than I am is totally irrelevant to my claim of specific and rank discrimination with regard to pay!

I do not require that Internal Revenue prove that the minority of their employees surpassing me in age is not merely a manifestation of tokenism by means of which they establish conformance with the spirit if not the letter of the rules and thus maintain a smoke screen behind which shady and surreptitious practices can go on undetected and unhindered.

But I do think I have a right to an explanation from IRS as to how interviewing committees are selected. And what is their real purpose if it isn't that of masquerading a non-existent impartiality.

If the committee were selected at random, then wouldn't I have been justified in concluding based on my first interview that one out of every three IRS employees was older than I? And in my second interview, one out of every two?

I, and I submit fairness, require that these were the questions and considerations that a responsive defence to my charges should have concerned itself with. Rather than pontificating the sanctimonious, meaningless, mealy-mouthed gibberish of "patterns."

I submit, that in view of the foregoing it has been established beyond doubt that Mr. Reich's procedure in this matter has been impertinent, inconsequential and dismally inept.

I submit further that IRS is at this very hour in flagrant delicto with respect to my employment. And that the reasons given by them for their continuance in this deplorable state are distorted, disingenuous, dishonest, disgraceful and altogether despicable.

RECEIVED

JUL 19 1975

E. E. L. L.

AFFIDAVIT

7

State of New York)

County of Kings)

ss:

I, Roberta Hendler, Personnel Staffing Specialist
(Deponent's name) (Title and grade of position)

GS-11, IRS, Brooklyn District living at _____
if employed by agency involved in complaint)

_____, hereby solemnly swear:

I have performed the duties of the above titled position for about two years. This covered the period of October 1973 to date.

My duties involved the supervision of hiring procedures for all of the Taxpayer Service Division and parts of Collection Division, which includes the Revenue Representative Section.

I have read the description of the interviewers in Mr. Cooper's affidavit concerning the job of Revenue Representative. I do not recognize any person described there.

I have gone through all JFA Civil Service Certificates in our files for 1973 and part of 1974. His name was on only one certificate, that for Taxpayer Service Clerk. I contacted C.S.C. to find out if his name had been referred to us on any other certificates. I was informed that his name had been referred to us on a certificate for Revenue Representative, and I requested that a copy of that certificate be forwarded to us. It was forwarded to us.

Mr. Cooper's name was on the certificate with a hand written code "FR" alongside his name indicating that he failed to respond to the telegram in-

Page 1 of 3 pages.

Deponent's initials: RBH

EXHIBIT 4c

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forming him of the position opening.

I cannot explain what happened to our copy of the certificate. Our regular procedures with regard to these certificates are that after all selections have been made and the non-select letters sent, the first copy of the certificate is returned to C.S.C. together with any declinations and qualification statements pertaining to the candidates whom we did not hire, plus a copy of the telegram of notification of the position opening which was sent to the candidates. The second copy of the certificate is kept in our files together with copies of the non-select letters, copies of the declinations, the interview sheets of the non-selected candidates, and any worksheets pertaining to the certificate plus copies of the telegrams sent to the candidates.

Regarding the Revenue Representative certificate in question, the "FR" notation indicated that Mr. Cooper failed to respond to the telegram. There would be no panel worksheets or a non-select letter in such a case.

There were two persons selected from that register, and four others who failed to respond. Normally we would have the interview sheets in the official personnel folders of the two selected. However, at that time I was filing the interview sheets with our copy of the certificate, and we are now unable to locate our copy of that certificate, and the associated interview sheets.

I checked our records and found that the two selectees indicated above were the only outside hirings for Revenue Representative in that period, and that the remaining positions had been filled from within the Service.

I have read the above statement, consisting of 3 pages, and it is true and complete to the best of my knowledge and belief. I understand that the information I have given is not to be considered confidential and that it may be shown to the interested parties.

Roberta J. Hessler
(Deponent)

Subscribed and sworn to

before me at 35 Tillam St. Brooklyn, N.Y.

on this 3th day of August, 1971

Paul A. Howard
(EEO Investigator)

SUPPLEMENTAL AFFIDAVIT

4-10

State of New York)
County of Kings) SS:

I, Roberta Hendler, Personnel Staffing Specialist
(Deponent's name) (Title and grade of position)

GS-11, IRS, Brooklyn District living at _____
if employed by agency involved in complaint

_____, hereby solemnly swear:

I wish to correct the information given on page 2, the last paragraph, of my affidavit dated August 8, 1975.

In that paragraph I stated as follows, "I checked our records and found that the two selectees indicated above were the only outside hirings for Revenue Representative in that period, and that the remaining positions had been filled from within the Service."

Because of new information discovered, it is now apparent that 6 other persons were hired for the position of Revenue Representative from the outside. Four of those persons are still employed by IRS, and two have left the Service. This information was not discovered before because our retained copy of the certificate of eligibles from which these appointments were made is missing. The number of the certificate is the same as that of the September 20, 1973 certificate, except that it is designated "C" instead of "B", and I believe they were attached together, thus explaining why they are both missing.

Page 1 of 3 pages.

Deponent's initials: RH

EXHIBIT 42

Forms 3282, Standard Interview Rating Form, were obtained from the personnel files of Janet Evans, Julie (Newman) Leonard, and Pamela Logan. One form was missing, that from the file of Harold Albritton. The other two forms are presumed to have been sent to the Federal Records Center, since Mitchell Baum and Juan Munoz have left the Service, and their official personnel folders sent to Federal Records Center.

The form 3282 of Janet Evans indicated that a panel was assembled 10/1/73 to interview for the position of Revenue Representative, GS-4, and that the panel consisted of 3 persons, two women and a man. The women were Ida Mason, since retired, and Marie Cox. The man was Mark Bernstein.

I am aware that Mr. Cooper stated that he was interviewed on that date by two women and a man.

I am familiar with the 3 members of the panel indicated above. I would describe them as follows:

1st - Ida Mason - looked to be in her 50's, reddish blonde hair, slender to average build, 5'4" or 5'5".

2nd - Marie Cox - looked to be in her late 40's, pepper and salt colored hair, slightly overweight, about 5'3" or 5'4".

3rd - Mark Bernstein - age about 30, dark hair and moustache, about 5'9", and weight - I have no idea because of my inability to guess men's weight.

I have read the above statement, consisting of 3 pages, and it is true and complete to the best of my knowledge and belief. I understand that the information I have given is not to be considered confidential and that it may be shown to the interested parties.

Robert J. Walsh
(Deponent)

Subscribed and sworn to

before me at 35 Teller St. Brooklyn N.Y.

on this 12th day of August, 1975

Paul A. Howard
(EEO Investigator)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

OCT 24 1975

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Dear Mr. Cooper:

Mrs. Barbara R. Thompson, BEO Officer, Internal Revenue Service, has forwarded your age discrimination complaint, based on failure to hire, dated July 14, 1975, to this office. Mrs. Thompson has recommended that your complaint be rejected on the basis that when the alleged act of discrimination took place, the Age Discrimination in Employment Act of 1967, as amended on May 1, 1974, to include the Federal Government, was not in effect.

On page three (3) of your Complaint of Discrimination, you indicated that on December 27, 1973, you received a letter from the Internal Revenue Service stating, "In reply to your inquiry contained in your communication, we regret to inform you that you were not selected for the position for which you applied." The effective date of implementation of the Age Discrimination in Employment Act of 1967 under which coverage of the Act is extended to include the Federal Government (Public Law 93-259) is May 1, 1974. As the alleged discrimination took place prior to the effective date of the new law, your complaint is rejected.

You have the right to appeal this rejection to the U. S. Civil Service Commission, Appeals Review Board, 1900 E Street, N. W., Washington, D. C. 20415. Your appeal must be in writing, signed by you, and received in that office within fifteen (15) calendar days of the receipt of this letter; or, if you wish, you may file a civil action in an appropriate U. S. District Court within thirty (30) calendar days of the receipt of this letter.

Sincerely yours,

(Signed) Inez S. Lee for

David A. Sawyer
Director
Equal Opportunity Program

Mr. Solomon Cooper
One Parade Place
Brooklyn, NY 11226

bcc: Barbara Thompson

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RADALL:amm:10/24/75

Sol. Sawyer

One Parole Place . Brooklyn, New York 11226 . 212 BU7-4698

14

October 31, 1975

Appeals Review Board
U. S. Civil Service Commission
1900 E Street, N. W.
Washington, D. C. 20415



Gentlemen:

In consequence of the "rejection" and pursuant to the instructions of the herewith letter (being ignorant of the forms and formalities in which an appeal such as this is required to be couched), I take and use this means to take vigorous exception to the short shrift Mr. Sawyer has seen fit to accord to my complaint.

The rejection, as the letter states, is based on the ground that the job-denial took place before such discriminatory action was illegal. But this begs the question. Does its illegality make it any the less reprehensible? And if it was all so legal why was it so clandestine and evanescent; leaving no trace nor possibility of an onus to be borne some day by some one?

The test qualification did not specify age limits. "Junior," I was repeatedly assured had reference only to the job's ranking; not to the prospective holder's age.

Quoting from my formal complaint, I wrote: ". . . I explained that I had had two interviews and the turndown. I had received didn't indicate which job it had reference to. She said she was 'positive' it was for the temporary one (she herself had typed the rejection notice)." The one referred to in the letter herewith! The very one on which I did not and do not base my complaint! Continuing the quote as above, "At which I asked her how about the other, permanent one?" And she replied, "If you haven't heard, then it is still open."

And so I repeat, on this day, October 31st, 1975: "Since I haven't heard to this day, I must assume that 'it is still open.'" And thus the legal discriminatory denial dates from October 1973. And the illegal discriminatory denial sets in, if you will, on May 1st, 1974. Then as of May 1st 1974, I have been, and still am, age-discriminatorily job-denied in prima facie contravention of the Age Discrimination in Employment Act of 1967, as amended May 1st, 1974.

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Sol Cooper

One Parade Place . Brooklyn, New York 11226 . 212 BU7-4698

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Thus the rejection letter, enclosed herewith, addresses itself to and bases itself on a proceeding I never complained about but merely mentioned as corroborative of the unfinished proceeding and what I felt to be its reason for so remaining.

In the process of thus perfunctorily disdaining and seriously dealing with both the charges I have made in my formal protest and those brought to light in the subsequent official investigation of them, Mr. Sawyer has left unaddressed, unresolved and unrelieved some very serious derelictions of duty and responsibility both on the part of IRS and its decidedly partial EEO minions.

The "chapter and verse" in support of these weighty charges can best be elucidated in the following synoptic account of what happened to me as a result of my taking and passing, in innocent good faith, of a Civil Service Examination.

On September 27th, 1973, someone in Internal Revenue in Brooklyn, falsely representing herself to be a Western Union employee, phoned me and told me she had a Mailgram offering me employment as a Revenue Representative GS-592-4. If I was interested, she went on, I was to call a Miss Costello and arrange for an appointment. I did this. And Miss Costello gave me an appointment and sent me some employment forms I was to fill out and bring to the interview.

The interview took place on October 31st, 1973 between myself and a 3-member panel; with whom I left the aforementioned forms contained in a folder labelled, "Personnel File." But on July 10th, 1975, as a result of my having complained of job-denial because of age discrimination, and in the process of having this looked into by Mr. Rojas, EEO consultant; there was nothing in IRS files to show that I had had an interview or left any papers or even that I had been sent a Mailgram. All Mr. Rojas could find, he told me, was a "No Show" comment next to my name on the register. That's all! No application forms! No record of interview! No record of the purported Mailgram!

Consequently, when, as a result of my formal complaint, I was interviewed by Mr. Paul A. Howard, he found it necessary to spend the bulk of his time with me in confirming that I was indeed called to an interview! That I did indeed show! That I did indeed make out forms. And that I was not recounting what in truth was a mirage, a snare and a delusion!

Nor did the evasion, misrepresentation and deception end there. Following my submission of my formal complaint, I received a letter from the Regional Commissioner, Internal Revenue Service,

Sol Cooper

One Parade Place . Brooklyn, New York 11226 . 212 BU7-4692

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signed by Mr. Bernard Freeman, EEO Officer, dated July 18, 1975, in which he informed me: "... you will receive a copy of the investigation report and have an opportunity to discuss it with an appropriate official ..." As of today, I have received neither the report nor the discussion opportunity. When I phoned Mr. Freeman, on October 30th, 1975, seeking to discover why I had never gotten the report, he surlily responded that he didn't have to send it to me, and hung up!

But I needed and wanted the report in order to make this appeal as effective as I know how. And I had an inkling that the discrimination, whether legal or not, at that time, was not the only perversion of the spirit and intent, as I see it, of Civil Service procedures and objectives. There does appear to be a rule, regulation or law which prohibits an agency from turning down a disabled veteran otherwise eligible for employment without first obtaining permission to do so from the Civil Service Commission. This prohibition, notwithstanding, the investigative report shows, I have reason to believe, that I was in fact passed over by two applicants than whom I had a higher test score.

Was this why Mr. Freeman omitted and then refused to send me the report? Your "Fed Facts 10" leaflet states the following: "An impartial investigation is made. You are given a copy of the investigative file, and the Equal Employment Opportunity Officer again provides an opportunity for an informal adjustment."

I cannot help but wonder if I'm the only one from whom the report was intentionally withheld. Did it ever reach Washington? Will you, in adjudicating this appeal, get to see it? Or was it destroyed as being too incriminating, as was my "Personnel File?"

A pair of records, I'm sure you will agree, if you ever get to see them, which all too clearly betray a biased and undeviating dedication to the exculpation of the agency no matter how foul and unscrupulous are the means it employs in doing so.

Respectfully submitted and signed by

Solomon Cooper
Solomon Cooper

Memorandum

Subject: Request for Advisory Opinion

From: Joseph Canedo

To: David A. Sawyer

Date: 20 OCT 1975

In Reply Refer To:

GC:LEG 3-2-2

MB:and

Your Reference:

RECEIVED

OCT 22 1975

Department of the Treasury
Office of Equal Opportunity Program

This is in response to your request for an advisory opinion concerning your duty to continue processing a complaint of age discrimination which was not the subject of an administrative proceeding on May 1, 1974, the date when the Commission's age discrimination regulations became effective. Mr. Solomon Cooper, the complainant, filed an EEO complaint on July 14, 1975 in which he indicated that the alleged discriminatory acts took place in October and December 1973.

It is our opinion that you have no obligation to continue processing the complaint since it had not been filed on May 1, 1974, nor had the discriminatory action taken place within the 30 days immediately preceding May 1, 1974. We are enclosing a memorandum on this issue which was sent on July 29, 1975 to the Directors of Equal Employment Opportunity by Joseph W. Lowell, Jr., Assistant Executive Director.

In reaching this decision, Mr. Lowell, and the General Counsel were guided by four United States Courts of Appeal decisions which found that the EEO Act of 1972 applied retroactively to all cases pending administratively on the act's effective date. See Sperling v. United States, 515 F.2d 465 (3d Cir. 1975); Brown v. General Services Administration, 507 F.2d 1300 (2d Cir. 1974), cert. granted, 43 U.S. L.W. 3625 (1975); Womack v. Lynn, 504 F.2d 267 (D.C. Cir. 1974); Koger v. Ball, 497 F.2d 702 (4th Cir. 1974).

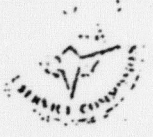
They further took into consideration a memorandum filed by the Solicitor General to the Supreme Court in Place v. Weinberger, 497 F.2d 412 (6th Cir. 1974), in which the Solicitor General concluded that the EEO Act applied to all cases pending administratively on the Act's effective date. See Adams v. Brinegar, 7th Cir. No. 75-1155 (August 5, 1975).

However, neither the established position on the EEO Act nor the Commission's eventual decision on the retroactivity of the ADEA would have any applicability to Mr. Cooper's complaint, since it does not meet the requisites of the July 29, 1975 memorandum.

Attachment

40

Keep Freedom in Your Future With U.S. Savings Bonds



41 18

UNITED STATES CIVIL SERVICE COMMISSION

WASHINGTON, D.C. 20415

JUL 29 1975

IN REPLY PLEASE REFER TO

YOUR REFERENCE

TO: Directors of Equal Employment Opportunity

FROM: Joseph W. Lowell, Jr.
Assistant Executive Director

SUBJECT: Effective Date of Actions and Complaints Covered
by Subpart E to Part 713, Nondiscrimination on
Account of Age

FPM Letter 713-28 (dated July 9, 1974), which transmitted Subpart E to Part 713 of civil service regulations, states: "The attached regulatory material is effective with respect to any action occurring on or after May 1, 1974." Based on recent developments regarding retroactive application in related cases, we have concluded, with the advice of our Office of General Counsel, that the applicability of Subpart E is properly effective with regard to alleged discriminatory actions occurring prior to May 1, 1974 (the effective date of Public Law 93-259) under the following circumstances:

- o If a complaint of age discrimination was the subject of administrative proceedings in process (e.g., a grievance) on May 1, 1974.
- o If a complaint of age discrimination was filed under Part 713 on or after May 1, 1974, based on an alleged discriminatory action which occurred within the 30 days immediately preceding May 1, 1974, subject to Part 713 timing and purview provisions specified for the filing and acceptance of discrimination complaints.

While we anticipate that application of the above interpretation will affect a relatively small number of cases, this information should be made known to all officials authorized to accept and process discrimination complaints.

RECEIVED

OCT 22 1975

Department of the Treasury
Office of Equal Opportunity Program

41

ARS:dh
May 13, 1976

REGISTERED MAIL-RETURN RECEIPT REQUESTED

Mr. Solomon Cooper
One Parade Place
Brooklyn, New York 11226

BEFORE: Tillman, McDonald and Jeffries,
Board Members. By majority vote,
Member Tillman disagreeing.

Dear Mr. Cooper:

This is in further reference to your appeal dated October 31, 1975, from the October 24, 1975 decision of the Department of the Treasury. In that decision, the agency rejected your complaint of age discrimination, dated July 14, 1975, as not being within the purview of the Civil Service regulations on age discrimination.

The record indicates that on or about June 5, 1975, you contacted an EEO Counselor with respect to your allegation that on October 1, 1973, you were interviewed by the agency for a position of Revenue Representative, GS-4; that you were never notified as to the results of this interview; and that your nonselection was due to discrimination based on age.

The Counselor in a report dated July 10, 1975, states that he reviewed a copy of the Civil Service Commission register dated September 20, 1973, for Revenue Representative vacancies and noted that you were among seven people certified. Furthermore opposite your name, there appeared a handwritten notation, "FR," which meant that you failed to respond to the telegraphed invitation from the agency which had been sent to all the eligible candidates for the position. The Counselor also noted that you had been interviewed only once, for the position of Taxpayer Service Clerk, GS-4. The Counselor concluded that from his investigation, he had been unable to find any pattern of rejection by the agency of applicants for positions who were over 45 and under 65 years of age. Following a final interview with the Counselor, on July 10, 1975, you filed a formal complaint of discrimination dated July 14, 1975 alleging, as you had to the Counselor, that you were interviewed for the position of Revenue Representative, GS-4, on October 1, 1973, that you were never notified of the results of the interview, and that your nonselection was due to discrimination based on age. In explanation of your allegation of discrimination, you also mentioned your interview on December 6, 1973, for the temporary position of Taxpayer Service Clerk, GS-4 and your nonselection for that position on December 27, 1973.

The agency's decision was issued on October 24, 1975, and informed you that your complaint was rejected as it concerned matters occurring before May 1, 1974, the date on which coverage of the Age Discrimination in Employment Act (ADEA) of 1967 was extended to include federal employees.

In your letters to the Board dated October 31, 1975, and January 9, 1976, you assert that the agency's decision to reject your complaint because the date of your nonselection to the Taxpayer Service Clerk position was prior to May 1, 1974, was incorrect because you did not base your complaint on this nonselection. Rather you state that the basis of your complaint is your nonselection for the Revenue Representative position and that since you have never been notified of the results of your interview for this position, the alleged discriminatory action in denying you this position is of a continuing nature.

In this regard, the only evidence that you were interviewed on October 1, 1973 for the position of Revenue Representative is your statement to that effect. The Board notes that the evidence as stated in the Counselor's Report is that although you were eligible for the position, you did not respond to the telegraphed invitation from the agency which had been sent to all eligible candidates. Even if your allegation is correct, however, the Board notes that you state that the interview for this position occurred on October 1, 1973, which is approximately seven (7) months before May 1, 1974. As noted by the agency in its decision, complaints of discrimination based on age may only be accepted and processed by an agency when the instances complained of occurred on or after May 1, 1974. None of the matters you have raised occurred on or after May 1, 1974. Therefore, the Board affirms the agency's decision of October 24, 1975, rejecting your complaint of age discrimination as it is not within the purview of the Commission's jurisdiction.

Civil Service regulations provide that the decision of the Board is final and there is no further right of administrative appeal.

If you are not satisfied with this decision, you are authorized by section 15 of the Age Discrimination in Employment Act of 1967, as amended April 8, 1974, (29 USC 633a) to file a civil action in an appropriate U.S. District Court.

For the Board:

Sincerely yours,

(H)S/MAW 5/12/76

Herman D. Stainan
Chairman

cc: Ms. Weilda C. Lee
Office of Chief Counsel
Internal Revenue Service
Department of the Treasury
Washington, D. C. 20224

Director, Equal Opportunity Program
Department of the Treasury
Main Treasury Building
Washington, D. C. 20220

76C 1053

Solomon Cooper

Plaintiff

- v -

United States Civil Service Commission
Appeals Review Board

Defendant

1. Solomon Cooper *PLAINTIFF*
One Parade Place
Brooklyn, New York 11226
2. United States Civil Service Commission *DEFENDANT*
Appeals Review Board
Washington, D. C. 20415
3. The defendant's instruction: "If you are not satisfied with this decision, you are authorized by section 15 of the Age Discrimination in Employment Act of 1967, as amended April 8, 1974, (29 USC 633a) to file a civil action in an appropriate U. S. District Court." *Does this court has jurisdiction.*
4. (1) I am suing to obtain the job I am being wrongfully denied and for backpay I lost by this denial.
(2) I do not have the remedy for which I am now suing because the appeals board of the U.S. Civil Service Commission rejected my complaint.
5. I seek reversal of the appeal board's decision.

Solomon Cooper
Solomon Cooper
One Parade Place
Brooklyn, New York
BU7 - 4698

Page 2 of two pages

My basis for this request for reversal, is my conviction that the Appeals Board, in its May 13th, 1976 ruling "selected" the contentions, facts and laws which they considered in a wholly capricious and arbitrary manner. And that, nonetheless, those that it did so "select" fail to sustain and support the conclusion they found upon them.

For example. They make much too much of a telegram which I maintain I never received, and which, as I saw it, is entirely irrelevant to the matter in hand.

They mention the counselor's statement that he saw no pattern of discrimination, but they totally ignored mine: "... I was in fact passed over by two applicants than whom I had a higher test score."

They state further: "The only evidence that you were interviewed on October 1st, 1973 . . . is your statement to that effect." Yet in my letter to them on October 31st, 1975, I wrote, "Mr. Paul Howard, EEO Investigator, found it necessary to spend the bulk of his time with me in confirming that I was indeed called to an interview! That I did indeed show!"

The further basis of this appeal is that Mr. Paul Howard's "investigation report" was never given to me as promised. This despite my repeated requests for it both orally and in writing.

I, not being a lawyer, based my original complaint of age discrimination on the general belief that Civil Service was free from all forms of discrimination of whatever variety. And I mentioned age merely because a vague charge of discrimination without any specifics is rather meaningless. The point was the discrimination per se and the age was more to buttress the charge than to be the crux of it.

But IRS, with the advisory board, as it turned out, concurring, chose to drag it under the, for them, umbrella of the Age Discrimination in Employment Act of 1967. Under this "cover" they can chortle, "Though age discrimination be reprehensible, such discrimination was not in violation of any laws."

Any laws?? The whole concept of Civil Service falls apart if, in the final analysis, positions in it are not obtained purely on a non-discriminatory basis. And it appears to me very unlikely that both the agency and the commission couldn't, if they were so inclined, find rules, regulations and laws whose purport and purpose was precisely the prevention of the kind of wrongs done me in this instance, and failing of prevention to redress them fully and rapidly.

A further basis of this appeal is the omission of the agency to obtain permission to hire a disabled veteran.

CIS:RLH:sr
F.760860

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

File Copy

-----x
SOLOMON COOPER,

Plaintiff,

-against-

NOTICE OF MOTION TO
DISMISS PURSUANT TO
FED. R. CIV. P., RULE 12(b)

UNITED STATES CIVIL SERVICE
COMMISSION APPEALS REVIEW BOARD,

Defendant.
-----x

S I R :

PLEASE TAKE NOTICE that the defendant will move this Court before the Honorable George C. Pratt, United States District Judge, Eastern District of New York, in Courtroom No. 6, United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York, on the 15th day of October, 1976 at 9:30 o'clock in the forenoon, or as soon thereafter as counsel may be heard, for an order dismissing plaintiff's complaint on the grounds that it fails to state a claim for which relief can be granted and that this Court lacks jurisdiction of the subject matter of this complaint, and for such other relief as is just, proper and equitable.

Dated: Brooklyn, New York
September 17, 1976.

25

Yours, etc.

DAVID G. TRAGER
United States Attorney
Eastern District of New York
Attorney for Defendant
225 Cadman Plaza East
Brooklyn, New York 11201

By:

RICHARD L. HUFFMAN
Assistant U. S. Attorney

TO:

SOLOMON COOPER
One Parade Place
Brooklyn, New York

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

26

SOLOMON COOPER,

DOCKET NO. 76 C 1053

Plaintiff,

- against -

UNITED STATES CIVIL SERVICE
COMMISSION APPEALS REVIEW BOARD,

MEMORANDUM AND ORDER

Defendant.

----- x

PRATT, J:

Plaintiff pro se Solomon Cooper's complaint charges the United States Civil Service Commission with violating 29 USC §§621 et seq. Specifically, Mr. Cooper alleges that he was discriminatorily denied employment with the Internal Revenue Service (IRS) after interviews on October 1, 1973 for one position (Revenue Representative) and on December 6, 1973 for another (Taxpayer Service Clerk) because of his age which plaintiff alleges to be over "40 and not yet 65". Hearing of February 18, 1977, P Ex. 4. By motion filed September 20, 1976, the government moved to dismiss the complaint pursuant to FRCP 12(b) on the grounds that it failed to state a claim for which relief could be granted and that this court lacked subject matter jurisdiction.

A 27

When the motion came on for argument on December 10, 1976, however, the Assistant United States Attorney (AUSA) representing the government advised the court that defendant wished to adjourn the motion to dismiss -- a request which, on plaintiff's consent, was granted. As the AUSA explained in a letter dated December 15, 1976:

At the hearing of the defendant's motion to dismiss plaintiff's complaint on December 10, 1976 counsel for defendant noted that plaintiff, who is appearing pro se, had submitted a reply memorandum to defendant's motion that contained several new "facts" which may have created a cause of action unrelated to the Age Discrimination Act which forms the basis of plaintiff's present complaint. Counsel advised the Court that no administrative record had been received which would enable the United States Attorney's office to reply to the charges contained in plaintiff's reply brief. We have now received the record and enclose a copy herewith. It contains, inter alia, the following information:

- 1) Plaintiff was advised to schedule an interview for the position of Revenue Representative or Taxpayer Service Representative not later than September 28, 1973.
- 2) Plaintiff failed to arrange for such an interview and plaintiff was not, in fact, interviewed on October 1, 1973.
- 3) Plaintiff was interviewed for the position of Taxpayer Service Clerk on December 6, 197[3] and was not selected for that position by the interviewing committee.

- 28
- 4) A very thorough investigation was conducted by Paul Howard, Equal Employment Opportunity Investigator for the Internal Revenue Service. He found that the Internal Revenue Service had followed proper procedures and had not discriminated against plaintiff.

The government forwarded a copy of the investigative report referred to in its letter to Mr. Cooper and renewed its motion to dismiss.

I

Briefly stated, the government took the position that: 1) there was no interview of plaintiff on October 1, 1973 for any IRS position and, therefore, there could be no age discrimination involved in failing or refusing to employ him; and 2) since plaintiff was rejected on December 26, 1973 for the position for which he was interviewed on December 6, 1973, any discrimination against plaintiff occurred prior to the effective date of 29 USC §§621 et seq. Plaintiff Cooper, on the other hand, while conceding that recovery for the December 26, 1973 rejection is barred, Plaintiff's Rejoinder to Motion to Dismiss at 11, insists that he was also interviewed on October 1, 1973, that he was never informed of the outcome of that interview, and that because of age discrimina-

tion he continues to be denied the employment for which he was interviewed. Since disposition of the motion appeared to rest, at least in part, on a factual determination of whether plaintiff was interviewed and considered for employment on October 1, 1973, an evidentiary hearing was held before the undersigned on February 18, 1977. The following represents the undersigned's findings of fact and conclusions of law based on the testimony and documents presented at the hearing.

II

In the papers submitted to the court both before and at the hearing, plaintiff maintained that on June 6, 1973 he took and passed the Junior Federal Assistant civil service examination and that on or about September 27, 1973 he received a phone call instructing him, if interested in the position of Revenue Representative with IRS, to call a Miss Costello and arrange for an interview. According to Mr. Cooper, he complied by arriving for an interview in the Brooklyn IRS offices on October 1, 1973 as arranged through Miss Costello and by filling out the employment forms previously forwarded by her. Moreover, "I [Cooper] * * * was interviewed on that date in Room 215 by two women and a man. The male panelist, whose name I positively recollected when

it was repeated to me during the course of the IRS investigation of this subject matter, was Mark Bernstein. The two women's names, [were] Ida Mason and Marie Cox * * *. I have yet to learn the outcome of this interview." Plaintiff's Statement of February 18, 1977 (P Ex. 4).

III

Presented with these allegations that an interview had taken place on October 1, 1973, the government called Roberta Hendler, Nancy Costello, Mark Bernstein, and Marie Cox to testify at the hearing.

Roberta Hendler, Personnel Staffing Specialist at the Brooklyn IRS office, testified that she supervised the hiring procedures for the Taxpayer Service Division, which includes Revenue Representatives, for the period including October 1973. Ms. Hendler testified as to the standard hiring procedures in general and to Mr. Cooper's claims in particular. According to the records as described by Ms. Hendler, although Mr. Cooper apparently was sent a telegram concerning the job of Revenue Representative (she testified that telegrams were sent rather than phone calls made), the Civil Service certificates for the position retained by the IRS indicated, by the

hand written code "FR" alongside his name, that Mr. Cooper failed to respond to the telegram informing him of the position opening. Ms. Hendler had no independent recollection of Mr. Cooper, and said that she was unable to find many of the documents relating to the October 1973 applications and interviews for the Revenue Representative position. Finally, she testified that the list of appointments to the position was filled on November 29, 1973.

Nancy Costello, Personnel Staffing Specialist with IRS in 1973, testified that she, too, had responsibility for hiring during the period in question and scheduled interviews for applicants as part of that responsibility. Although she identified her signature and initials on the documents relating to the December 1973 interview and application, she testified that she did not recall speaking to or seeing Mr. Cooper in December 1973; nor did she recall speaking to or seeing Mr. Cooper in October 1973.

Mark Bernstein testified that in October 1973 he was the Acting Chief, Interview Section, Office Branch, at IRS and that he participated as an interview panel member in substantially all the hirings of Revenue Representatives. Although Mr. Cooper alleged that Mr. Bernstein was a member

of the panel who had interviewed Mr. Cooper, and although Mr. Bernstein acknowledged that he did sit on an interview panel on October 1, 1973, Mr. Bernstein had no recollection of ever seeing Mr. Cooper.

While Marie Cox, Taxpayer Service Specialist, recalled sitting in October of 1973 on interview panels with Mark Bernstein and Ida Mason, now retired, she did not remember interviewing Mr. Cooper, nor did she recognize him as an applicant whom she may have interviewed.

IV

In addition to cross-examining these four witnesses in an attempt to refresh their recollection and/or attack their credibility, Mr. Cooper took the witness stand himself and read a well-prepared, articulate statement which recounted his claim that he had been called and interviewed for the position of IRS Revenue Representative on October 1, 1973.

V

Significantly, none of the government witnesses testified definitively, nor could they, that Mr. Cooper had not been interviewed on October 1, 1973.

Neither Mr. Bernstein nor Ms. Cox remembered Mr. Cooper. Nor could they be expected to, after interviewing thousands of applicants. Similarly, after processing thousands of applicants, Miss Costello could not be expected to, nor did she, specifically recall seeing or speaking to Mr. Cooper. Moreover, Ms. Hendler testified that some documents relating to this interview period were no longer in the IRS files and could not be found.

By way of contrast, Mr. Cooper had a positive recollection of having been interviewed on October 1, 1973. His description of the procedures, the panel, and his firm recollection of the events surrounding the interview strongly support his testimony. In short, I find the testimony of plaintiff Cooper to be credible and conclude that he was interviewed for the position of Revenue Representative for the IRS on October 1, 1973.

VI

The finding that plaintiff was interviewed on October 1, 1973 for the position of Revenue Representative, however, does not mean that he was denied this position in violation of 29 USC §§621 et seq. Factually, a fair interpre-

tation of the documents and testimony adduced at the hearing would indicate that Mr. Cooper was simply "lost" in a bureaucratic morass rather than discriminated against. Moreover, from a legal point of view, even if an act of age discrimination had occurred against plaintiff with respect to this position, it must have occurred before the effective date of the statute prohibiting age discrimination in federal employment.

As of May 1, 1974, 29 USC §733a proscribed discrimination on the basis of age in all matters, including hiring, relating to employment in and by the federal government. For instances of alleged discrimination occurring before May 1, 1974, the Civil Service Commission has interpreted 29 USC §633a to be applicable under two additional circumstances: 1) if the complaint was the subject of pending administrative proceedings on May 1, 1974; or 2) if the complaint was filed after May 1, 1974 based on alleged discrimination occurring within 30 days immediately preceeding May 1, 1974. Memorandum from Ass't Exec. Director of Civil Service Commission to Directors of Equal Employment Opportunity Commission, July 29, 1975. Any alleged discrimination must have occurred either at the interview of October 1, 1973 or

sometime between the date of the interview and the date when all the positions for Revenue Representative were filled, November 26, 1973. Viewing plaintiff's complaint most favorably, then, November 26, 1973 is the latest date on which a discriminatory act could have occurred. Since plaintiff did not file a complaint until May 14, 1975, some 17 months later, he falls within neither of the Commission's exceptions to the May 1, 1974 effective date of 29 USC §633a's applicability to federal hiring.

To avoid the time bar of the statute plaintiff contends that the alleged age discrimination practiced against him is of a continuing nature. The claim is without merit. See Woodburn v. LTV Aerospace Corp., 531 F2d 750 (CA5 1976); Powell v. Southwestern Bell Telephone Co., 494 F2d 485 (CA5 1974). To hold otherwise would be to make meaningless the effective date of the statute. Under plaintiff's theory, once any discriminatory act had occurred it would always be a continuing act and consequently would violate any subsequently enacted statute regardless of the date of the discriminatory act or the effective date of the statute. See Brown v. GSA, 507 F2d 1300, 1308 (CA2 1974), aff'd, 96 S Ct 1961 (1976). Once all the positions were filled, defendant's failure to

hire the plaintiff, even if originally prompted by discrimination, was the result of no job openings. Powell v. Southwestern Bell Telephone Co., supra, 494 F2d at 489.

VIII

In all the proceedings in this matter held before the undersigned, plaintiff Cooper has evidenced a gentlemanly manner and has effectively and articulately advocated his position. Indeed, the IRS would do well to recognize these qualities and renew its consideration of Mr. Cooper for future openings in the agency. Nonetheless, since there has been no violation of 29 USC §633a, and consequently no basis for this court's jurisdiction, defendant's motion is granted and plaintiff's complaint is dismissed.

SO ORDERED.

Dated: Westbury, New York
August 25, 1977.



GEORGE C. PRATT
U. S. DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SOLOMON COOPER,

Plaintiff,

- against -

UNITED STATES CIVIL SERVICE COMMISSION :
APPEALS REVIEW BOARD, :

Defendant. :

JUDGMENT

76 C 1053

A memorandum and order of Honorable George C. Pratt,
United States District Judge, having been filed on August 26, 1977,
granting the defendant's motion for dismissal of the complaint
pursuant to FRCP 12(b), and dismissing the complaint, it is

ORDERED and ADJUDGED that the plaintiff take
nothing of the defendant and that the complaint is dismissed.

Dated: Westbury, New York
August 26, 1977

Laura C. Galt
Clerk
By Mary Anne Gint
Deputy Clerk

A 38

1 THE CLERK: Two-page document received
2
3 in evidence as Plaintiff's Exhibit 1.

4 THE COURT: Call your first witness.

5 MISS BUCK: The Plaintiff calls Roberta
6 Hendler to the stand.

7 R O B E R T A H E N D L E R, called as a witness,
8 having been first duly sworn by the Clerk of the
9 Court, testified as follows:

10 DIRECT EXAMINATION

11 BY MISS BUCK:

12 Q What is your name?

13 A Roberta Hendler.

14 Q Miss Hendler, could you tell us what your
15 occupation is?

16 A I am a personnel staffing specialist.

17 Q By whom are you employed?

18 A I'm employed by the Internal Revenue Service,
19 Brooklyn District.

20 Q How long have you been employed in that
21 capacity?

22 A Approximately three and a half years.

23 Q What are your duties?

24 A I'm in charge of hiring for the office area
25 and taxpayer service division.

Q Now, Miss Hendler, can you explain to us what a "register" is?

A A register is a list of names kept by the Civil Service Commission of people who have passed a Civil Service examination test.

Q What is a certificate?

A A certificate is a list of names furnished by the Civil Service Commission to agencies in response to requests by the agency when it has vacancies.

Q What does the agency use the list for?

A The agency uses the list to find people to fill vacancies.

Q Can you give me a step by step explanation of how a certificate is used to fill a position?

A Yes. When an agency discovers it will have a position to fill it sends a request to the Commission and the Commission sends a certificate to the agency and then the agency service that receives that certificate will send out telegrams usually, to all of the people on the certificate. This may result in heavy responses so the agency may only consult the top names on the certificate. Now, these people would be contacted by either telegram or mail-o-gram and they would have to respond to the telegram or mail-o-gram and on occasion, responses are phoned in to one of the

secretaries.

Then, a personnel technician will set up certain interview times when people are to respond to the certificate mailing by calling the secretary and setting up scheduled interviews. The secretary tells the applicant when the particular interview will take place and those people then come in for their interviews and are met by the secretary and contact interviewers or people working in that area where the person is to be employed. The person is interviewed and then sent on their way and the interview sheets are given to the secretary. If a person passes the interview the secretary types up a pre-employment inquiry and if the person fails the interview the secretary types up a non-select letter and the interview sheets and whatever the secretary typed are given to the technician and the technician reviews the certificate and decides who to contact and sends out the pre-employment inquiries and sends out the non-select letters and when all the people are hired, the personnel technician is finished with the certificate and sends it back with all the documentation to the Civil Service Commission. This is usually done by forms.

Q Now, during the hiring of these people, are they hired all at one time?

A It depends on how many vacancies we have. In

1973 we were hiring large groups of people.

A 41

Q When you send a request for a certificate, do you indicate how many names you want?

A Yes, we usually indicate more names than we have vacancies for. We actually get a great number of names from the Civil Service Commission.

Q Are the names on the certificate listed in any kind of order?

A Yes. The names are listed in order of rating.

Q How is this rating determined?

A The ratings are determined by the score the person has achieved on the Civil Service test plus whatever Veteran's preference points they have.

Q How many certificates do you usually work with?

A We send for one and if one isn't sufficient then we would send for additional certificates.

Q Are the determinations that are made, the results, are they indicated any place?

A They are indicated, the results on the certificate.

Q I show you this seven-page document marked for Identification as Defendant's Exhibit A. Miss Hendler, could you tell me what this is?

BY MISS BUCK:

~~A~~ 42

Q Can you explain what the letters CP mean and the letters PT mean on the second page?

A Yes, CP stands for compensable preference and refers to the fact that these people have been given a ten point Veteran's preference.

Q What about the PT ; what does that stand for?

A That stands for either ten or five Veteran's point preference.

Q Can you explain why Walter Burger was crossed out and there is a star next to Walter Burger?

A It says that he lost his certification.

Q Could you explain Mr. McFarland and what is inserted under his name, what that stands for?

A Mr. McFarland's certificate was issued, and when that happened he was given a ten point compensatory preference. The ten point compensatory preference was taken off and his name was additionally placed in a different place on the certificate.

Q Could you explain to us what the letter A means?

A It means that it was sent to the agency.

Q And, could you explain what the letter FR means?

A It stands for failure to respond.

Q When an individual fails to respond do you make any further contact with him?

A They're marked with a FR and then they are not given any further consideration.

Q When the jobs have been filled, all the jobs have been filled would you notify them that the jobs have been filled?

A No, we don't.

Q Could you tell me if you entered the letters FR which are next to the name Solomon Cooper?

A Yes, I did.

THE COURT: You entered the letters FR next to Mr. Cooper's name?

THE WITNESS: Yes.

BY MISS BUCK:

Q Do you know when?

A At the time I returned the certificate. It would be in 1973, I guess.

Q When in '73, do you know?

A There should be a date on the front.

Q What is that date? There are several dates.

A May I have a copy?

(Handed.)

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A This was returned December 26, 1973.

Q That's when it was returned ?

A December 26, 1973.

MR. COOPER: I object

A That would be a three of four month difference.

MISS BUCK: I would like to have this
marked for Identification.

THE COURT: All right. Mark it.

THE CLERK: One-page document marked
for Identification as Defendant's Exhibit C.

BY MISS BUCK

Q Could you tell us what this is, please?

A Yes, this is the telegram that was sent when
we received the certificate to contact people listed
on the certificate.

MISS BUCK: The Government would
like to introduce this into evidence as
Government's Exhibit C.

MR. COOPER: No, sir.

THE CLERK: Defendant's Exhibit C
marked for Identification now received in

Western Union.

Q How can you tell whether the telegram actually has been sent out?

A Well, our teletype operator gives us either a white copy or a yellow copy which tells us that it has been sent out and also we receive a response to the telegram.

Q Did you receive a response in this instance?

A We did.

Q Miss Hendler, have you made a search of your employment records in this case, in this action?

A Yes, I have.

MISS BUCK: I would like to have this marked for Identification?

THE CLERK: Two-page document received and marked for Identification as Defendant's Exhibit D.

BY MISS BUCK:

Q Can you identify this, Miss Hendler?

A It's a list prepared of the competitive appointments to Revenue representative and competitive appointment to Revenue representative positions.

MISS BUCK: The Government would like to have this introduced in evidence as Defendant's

Exhibit D.

46

THE COURT: Is there any objection?

MR. COOPER: No objection.

BY MISS BUCK:

Q Can you tell us from that when the last person, when the last position was filled?

A Yes, the last position was filled on November 26th, 1973.

Q In the course of your search, did you have an opportunity to look at Janet Evans' 3282 form?

A Yes.

Q Could you tell me what the 3282 form is?

A It's a one-page form front and back.

Q What is it normally used for?

A It's a supplemental interviewing sheet.

Q Can you tell me how many pages were normally used?

A Well, it would be a front and a back of the 3282 plus an additional sheet, it would be three sides.

Q So, the normal number of pages would be three?

A Yes.

THE COURT: Would you give Exhibit D to the Clerk so he can mark it in evidence?

THE CLERK: Defendant's Exhibit D received

Hendler-Defendant-Cross

28
47

certificate. I don't know.

MR. COOPER: I have no further
questions, your Honor.

THE COURT: Any redirect?

MISS BUCK: No redirect, your Honor.

THE COURT: You may step down, Miss Hendler.

C A T H E R I N E C O S T E L L O, called as a
witness, having been first duly sworn by the Clerk
of the Court, testified as follows:

DIRECT EXAMINATION

BY MISS BUCK:

Q Miss Costello, what is your present occupation?

A I'm a position specification specialist with
the Social Security Administration.

Q How long have you been an assistant?

A Since April, 1974, close to three years.

Q Prior to that, where were you employed?

A The Internal Revenue Service, Brooklyn office.

Q In what capacity?

A Personnel staffing assistant.

Q How long were you employed as a personnel
staffing assistant?

A For a year and a half.

Q Can you give me the dates of your employment?

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A October 10th, 1972 through April 27th, 1974.

Q And can you describe your duties as a personnel staffing assistant?

A I had the responsibility for the clerical hiring for the Brooklyn District and all program handling.

Q Now, during essentially, January through April, were you responsible for the Revenue representative service job hiring?

A Yes.

Q Could you describe your duties, how your job worked?

A Yes. When one component agency had a vacancy they would contact the Civil Service Commission and would notify them of the vacancy. They would turn to the Civil Service register with the names on it that were listed in score order and they would then contact the people.

Q How would they do that; what method would they use?

A They would use the register and they would be notified by telegram or mailgram. Then they would set up interviews with the people who responded and I would arrange to have these people interviewed by one of the managers in the component which they wished to work and that is to make sure that the people met the qualifications for the position.

Q Did you schedule any interviews with respect to Revenue representative?

A Not for Revenue representative, no.

Q Do you recall having met Mr. Cooper?

A No, I don't know.

Q Do you recall having spoken to Mr. Cooper?

A No, it's long ago. I don't know.

MISS BUCK: I have no further questions of this witness.

THE COURT: Do you have any questions, Mr. Cooper?

MR. COOPER: Yes, your Honor.

CROSS-EXAMINATION

BY MR. COOPER:

Q You say that you never saw me before?

A I don't remember you.

Q Now, you spoke to me on the phone?

A I never spoke to you on the phone.

Q Now, I had two interviews, one on October 1st, 1973 for Revenue representative and one on December 6th, 1973 for taxpayer service clerk and for that interview I got a telegram, this mailgram with your name on it and I called you and made an appointment.

A Yes.

BY MISS BUCK:

Q Mr. Bernstein, what is your occupation?

A Regional analyst, North Atlantic Region,
Internal Revenue Service.

Q How long have you been employed in that
capacity?

A Approximately a year and a half.

Q Prior to that, were you employed as a Revenue
officer in the Brooklyn District?

A Yes.

Q And, prior to that?

A I was the Chief of the contact division in
the Brooklyn District office.

Q Can you tell us in what capacity you were
serving in 1973?

A Yes, in October of '73, I was the Chief at
the contact section.

Q What were your duties as Chief?

A I was responsible for the supervision of the
Revenue representatives at that office and in addition I
was also involved in the hiring of additional personnel for
those positions.

Q Can you recall having interviewed people for
the position of Revenue representative?

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A Yes.

Q Do you recall Ida Mason and Marie Cox?

A Yes.

Q Have you read Mr. Cooper's complaint?

A Yes.

Q And on that basis, do you have a recollection that you interviewed Mr. Cooper?

A No, I do not.

MISS BUCK: I would like to have this two-page document marked for Identification as Defendant's Exhibit F.

THE CLERK: Whereupon, Defendant's Exhibit F was marked for Identification.

BY MISS BUCK:

Q Mr. Bernstein, can you identify this document?

A Yes. That is the affidavit that I gave to the I believe, the EEO Officer. In 1975.

Q Are the statements in that affidavit true and correct?

A Yes, as far as I can remember.

Q Do you have any independent recollection as to what is contained in this affidavit?

A No, nothing other than what I heard.

MISS BUCK: I would like to have this

marked in evidence as Defendant's Exhibit F.

Do you have any objection to that, Mr. Cooper.

MR. COOPER: No.

THE CLERK: Defendant's Exhibit F
received in evidence.

BY MISS BUCK:

Q Mr. Bernstein, can you explain how the
personnel system works?

A Yes, generally, there are three individuals
that are selected to interview a series of people applying
for the same position or a number of positions. They are
the same and generally they all sit for the length of time
that it's necessary to interview all of the people.

Q Would the panel change positions during the
course of a day or would they handle the same job during
the interview?

A They would change.

Q Do you recognize Mr. Cooper?

A No, I do not.

Q Would you describe what you looked like in
1973?

A I would say pretty much the same as I do
today.

Q Did you have a mustache in 1973?

1
2 Q Miss Cox, can you tell me what your occupation
3 is?

4 A I'm a taxpayer specialist.

5 Q By whom are you employed?

6 A The Internal Revenue Service.

7 Q How long have you been employed as a taxpayer
8 service representative?

9 A Over ten years.

10 Q What are your duties?

11 A Preparing income tax returns and adjusting
12 taxpayer accounts.

13 Q Did you ever interview applicants for the
14 position?

15 A Yes, I do.

16 Q Do you recall having interviewed an applicant
17 for the position of Revenue representative?

18 A Yes.

19 Q Did you sit on a panel with Ida Mason and
20 Mark Bernstein?

21 A Yes. I did.

22 Q You have read the affidavit of Solomon
23 Cooper and on that basis do you recall having interviewed
24 Mr. Cooper?

25 A I don't recall it.

1
2 Q Do you recall having a conversation with an
3 individual from the EEOC, an investigator there, Mr. Howard?

4 A Yes. He called the office and I wasn't there
5 and I returned the call the next day.

6 Q Did that individual call with respect to
7 Mr. Cooper, his discrimination suit?

8 A Yes.

9 Q Do you recall the substance of that conversa-
10 tion?

11 A Well, one thing I recall was that I was asked
12 for a description of Ida Mason. The description that
13 Mr. Cooper gave was that she was a woman about the age of
14 seventy and Miss Ida Mason, I would say is fifty-five and
15 upwards but not older.

16 Q Could you tell us whether you recognize
17 Mr. Cooper?

18 A No, I can't recall him.

19 Q Can you tell us, you were on the panel for
20 this particular interview?

21 A Yes.

22 Q How are these people selected?

23 A There are three people selected to the panel.
24 The person being interviewed for the job in the last year
25 or so, we have cut down on personnel but we would interview

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2 THE COURT: I think so. Have a nice
3 weekend.

4 S O L O M O N C O O P E R, called as a witness,
5 having been first duly sworn by the Clerk of the
6 Court, testified as follows:

7 MR. COOPER: Your Honor, I would like
8 to read my prepared statement into the record.

9 THE COURT: All right, proceed.

10 MR. COOPER: "I am over forty years of
11 age and not yet sixty-five. I am a disabled
12 veteran and in civil service parlance with
13 respect to this proceeding a "preference
14 eligible."

15 On September 27th, 1973, I received a
16 phone call from somebody in IRS, falsely repre-
17 senting herself to be an employee of Western
18 Union, informing me that she had a "Mailgram"
19 for me from IRS requesting me to call a Miss
20 Costello to arrange for an interview with regard
21 to employment with IRS. I asked the caller to
22 mail me the Mailgram. She said she would, but
23 she never did.

24 I called Miss Costello who set up the
25 appointment for October 1st, 1973 and also mailed

me employment forms which I was to complete and bring with me to the interview. I did so and was interviewed on that date in Room 215 by two women and a man. The male panelist, whose name I positively recollected when it was repeated to me during the course of the IRS investigation of this subject matter, was Mark Bernstein. The two women's names, Ida Mason and Marie Cos, I'm more hazy about, but I am nonetheless prepared to aver that it was they who were on the panel.

I have yet to learn the outcome of this interview.

On July 14, 1975, I filed a complaint of discrimination with respect to this interview. And in that complaint I mentioned that I had had a second interview with IRS on December 6, 1973. And that, following upon that interview, I received a rejection notice dated December 26th, 1973, which rather evaded than explicitly stated the reason for the turndown.

Consequent upon this complaint, I received a letter, dated July 18, 1975 signed by Mr. Freeman, EEO Officer, indicating that

1
2 there would be an investigation, and that I
3 would receive a copy of the investigation report
4 and have an opportunity to discuss it with an
5 appropriate official. But neither the report nor
6 the opportunity was vouchered me.

7 The investigation, conducted by Paul A.
8 Howard, took place during the early part of
9 August, 1975. On September 30th, 1975, I
10 phoned Mr. Freeman, the EEO Officer who appeared
11 to have started the investigation, wanting to
12 know why I hadn't gotten the report. His
13 secretary told me he was working on it and that
14 I would get it as soon as he had completed it.
15 On October 24th, still not having received the
16 report, I got a letter from the Secretary of
17 the Treasury informing me that my complaint was
18 rejected on the ground that ADEA was not in
19 effect at the time the complaint of events took
20 place. On receipt of this letter, I again phoned
21 Mr. Freeman seeking the report. He told me
22 curtly he didn't have to send it to me and hung
23 up.

24 In my appeal to the Appeals Review Board,
25 I wrote, "that I needed and wanted the report in

1
2 order to maximize the effectiveness of the case
3 I was making." And in a subsequent letter, dated
4 January 9, 1976, I wrote in a postscript, "I
5 never have received a copy of the investigative
6 report," and asked, "was it ever made a part of
7 these proceedings?"

8 Yet, in despite of all my requests for
9 the investigative report, which I indicated
10 contained the evidence on which I was relying,
11 the Appeals Board ruled, incredibly, and I
12 quote, "The only evidence that you were inter-
13 viewed on October 1st, 1973 . . . is your
14 statement to that effect."

15 Finally, on December 15th, 1976,
16 Mr. Huffman, the assistant U.S. Attorney, mailed
17 me a copy of the long sought report. The report
18 which is all the evidence upon which I am relying
19 in this matter documents the following:

20 I stated I had had two interviews. The
21 first held in conference room of Room 215. All
22 deponents questioned with respect to this, by
23 the investigator, agreed that Revenue representa-
24 tive interviews were conducted there at that time.

25 I stated that I was interviewed by two

women and a man on the morning of October 1st, 1973. Such a panel, the report shows, had interviewed Janet Evans for the same position that morning.

While the physical descriptions I gave of the panelists who interviewed me did not in all points gibe with their actual physical attributes, there was significant agreement nonetheless with the descriptions given by others of the same people.

My record, as well as those of all the people whose names were submitted by the Civil Service Commission are missing. Those that were produced for the investigator are suspect, contradictory, insufficient and inconclusive. The certificate in the investigative file, number C73-3305B is dated September 17, 1973 and has six (6) names on it (not including names lined out). The accounts given in Mr. Rojas's "Activity Report," and in Roberta Hendler's affidavits appear to be with reference to a certificate apparently similarly numbered but dated September 20, 1973 and containing seven (7) names. The date - September 20th, 1973 - agrees with that on the "Certificate Form" with

1 which fifteen Revenue representatives were
2 requisitioned by IRS. This form was returned
3 four months beyond the due date. Suggesting that
4 this delinquency, on the part of IRS, may well
5 account for the "FR" on the register. And thus
6 it would indicate, in all likelihood, that it was
7 IRS who "failed to report" with respect to the
8 names so designated. In any case, it would,
9 undeniably, reflect the state of affairs that
10 obtained between October 11, 1973 (the date the
11 report was due), and March 11, 1974, the date
12 CSC actually received it. That IRS was delinquent
13 vis a vis CSC!

14
15 The returned certificate indicates further
16 that only two eligibles were appointed, yet the
17 form for the telegram (IRS so refers to it despite
18 the fact it looks much more like a mailgram) that
19 IRS was to have sent to the eligibles listed
20 thereon contains, again, seven names. And three
21 of those seven names; Janet Evans, Sanford J.
22 Stone and Elsie McFarland were "appointed."

23 The "Telegram" form has no date on top and
24 the line of boxes at the bottom in which such date
25 is to be inserted has been lopped off. A comparison

1 of similar "model message" (Exhibit 2G of the file)
2 does show these dates in the places mentioned.
3 The said "Telegram" states that interviews will be
4 held during the week of October 1st, 1973. But of
5 the three people hired, only Janet Evans whose
6 name is not on the register here in evidence was
7 interviewed that week - on October 1st, 1973 as
8 was plaintiff. Thus it would appear, that with
9 respect to Register C73-3305B dated 9/17/73 either
10 no one responded to the "Telegram" or, which is
11 much more likely, it was never sent!
12

13 As regards the second interview - whose
14 occurrence is not disputed - blatant, undisguised
15 discrimination is writ stark and unmistakable, in
16 this "accounting" -- no exhibit number -- of
17 "C73-4268," which documents that of seven "non-
18 selectees" six were given three "considerations"
19 while, I, the only "preference-eligible" non-
20 selectee, was given only one. Despite the fact
21 that I might have been entitled to six - three for
22 being the first of three and an additional three
23 by virtue of my preference eligibility!

24 The turndown notice I received following the
25 second interview was dated December 26th, 1973.

1 IRS, however, did not even seek the permission to
2 reject a preference-eligible until February 26,
3 1974, two full months after sending me their non-
4 select notice; on which, the non-select notice,
5 incidentally, they indicated no definite reason
6 thus evading the requirement noted on the applicable
7 form, 62-105; ". . . The veteran's preference act
8 gives the preference-eligible the right to request
9 and review the reasons. The reasons, therefore,
10 cannot be considered confidential."
11

12 The grant of permission to pass me over,
13 being a preference-eligible, was dated 4/25/74.
14 The form used for this purpose, contains the fol-
15 lowing instructions: ". . . the non-preference-
16 eligible selected may not legally be entered on
17 duty unless the Commission finds that the reasons
18 for passing over the preference-eligible are
19 sufficient, or unless a vacancy is reserved for the
20 preference-eligible pending receipt of the
21 Commission's decision."

22 This, of course, holds for the first inter-
23 view too!! Thus, since IRS has not obtained per-
24 mission to pass me over for the Revenue representa-
25 tive position, for which I was interviewed on
October 1st, 1973, it is legally unfilled to this

1 day. And the hiring transaction is thus still
2 pending.
3

4 So, too, on April 25th, 1974, the day CSC
5 granted IRS permission to pass over a preference-
6 eligible who was interviewed on December 6th, 1973,
7 the hiring was still pending as far as IRS was
8 concerned. Thus it did not fail to fall within the
9 requirements of Part 713 of the Age Discrimination
10 in Employment Act in that it is "...based on an
11 alleged discriminatory action which occurred within
12 the thirty days immediately preceding May 1, 1974.

13 I have made reference to the second inter-
14 view so that I might establish a motivation for the
15 inordinately vehement mistreatment I demonstrably
16 received in it. And to here declare that that
17 motivation could only have had its inception from
18 some previous contact between IRS and myself. A
19 contact at which something occurred which it was
20 imperative for IRS to keep from ever seeing the
21 light of day. That occurrence, I submit, could only
22 have been the interview I had had on October 1st,
23 1973; with its antecedents and its consequences or
24 lack of same.

25 Having finally obtained the "evidence" I

have vainly sought for so long, I now pray the Court to proceed pursuant to 42 USC Par. 1983, which reads as follows:

"Every person who under color of any statute, ordinance, regulation custom or usage, of any state of territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress".

That last point applies to the Federal level but not to the State level. What I am saying is that I cannot act under 42 USC Par. 1983, with respect to other facts just that.

THE COURT: A question just occurred to me. In that long question which you added to Mr. Bernstein described as part of your interview, as you left, you stopped and asked when you would hear from them and you were told you would hear shortly. Did you ever follow-up with an inquiry prior to Miss Costello?

THE WITNESS: Several times.

Competition Agents to Ken. K. p.

Name	COB	DOB
Harold Albritton	10/9/72	10/10/12
Mitchell Brown	10/9/73	7/10/62
Janet Evans	10/9/73	11/20/39
Pamela Logan	10/9/73	4 1/3/53
Julie Leonard (Crosstman)	10/9/72	10/12/49
Juan Muñoz	10/24/73	7/24/49
Elsie McFarland	11/26/73*	1/25/37
Southern Stone	10/30/73	7/9/36

Last position filled

A 66

Non-Competitive Applicants Res. Ref.

Name	DOB	DOB
Maryland Ceranton	09-30-73	12-9-73
Bonita Cooper (now Gibson)	09-16-72	06-02-73
Jack Green	09-16-73	11-20-34

CERTIFICATION FORM **A 67**

CERTIFICATE NO. **73-3305**

DATE ISSUED

AUG 20 1973

I. REQUEST

DEPARTMENT OR AGENCY

BUREAU OR FIELD ESTABLISHMENT

REQUEST NO.

73-65

TREASURY

INTERNAL REVENUE SERVICE

DATE

3-16-73

**U.S. CIVIL SERVICE COMMISSION
NEW YORK CITY AREA OFFICE
FEDERAL BUILDING - 26 FEDERAL PLAZA
NEW YORK, NEW YORK 10007**

This request should be submitted to the office of the Commission having jurisdiction over the work location named unless special prior agreement has been reached with the Commission.

(212) 264-9378

VACANCIES, POSITION TITLE, SERIES CODE, GRADE (SALARY, IF UNGRADED) AND DUTY LOCATION

15 REVENUE REPRESENTATIVES, GS-592-4 BROOKLYN DISTRICT

TYPE OF APPOINTMENT-

☒ Career or Career-Conditional

☐ Temporary not to Exceed

TO WHAT EXTENT WILL PERSONS APPOINTED BE REQUIRED TO TRAVEL?

☐ NOT AT ALL

☐ OCCASIONALLY

☐ FREQUENTLY

☐ D-FOR FILLING DEPARTMENTAL POSITIONS ONLY

☒ F-FOR FILLING FIELD POSITIONS ONLY

REQUEST RELATES SOLELY TO REQUIREMENTS OF THE MERIT PROMOTION PROGRAM

☐

AVAILABLE FOR WORK:

☒ IMMEDIATELY

☐ BY

REMARKS: (Give a description of duties where no standard specifications are published, and indicate any special qualifications required)

NO DISPLACED EMPLOYEES

3 Appts

APPROVED

EMC MAR 11 1974

ADDRESS WHERE CERTIFICATE IS TO BE SENT:

**DEPARTMENT OF TREASURY
INTERNAL REVENUE SERVICE
P.O. BOX 380 - GPO
BROOKLYN, NEW YORK 11202**

FOR FURTHER INFORMATION CONTACT:

(Name) **B. CAREY**

(Tel.) **596-4577**

APPROVED BY:

ACTING CHIEF,

(Name) **EDNA MANNING**

PERSONNEL BRANCH

II. CERTIFICATION

Please Review Instructions on Back of Form

TO REQUESTING OFFICE:

☒ The attached list of eligibles is provided in response to the above request.

SEP 20 1973

PLEASE RETURN WITHIN 21 DAYS OF DATE ISSUED OR BY

☐ Authority is granted to recruit through the open competitive examination for appointment to the position(s) indicated above.

Applications of persons recruited should be FORWARDED WITHIN 30 DAYS OF DATE ISSUED OR BY

☐ Authority is granted to fill the position(s) identified above under CS Reg. 316.402(A).

**NEW YORK LAB
RECEIVED
MAR 11 1974**

III. REPORT

Please Review Instructions on Back of Form

TO THE ISSUING OFFICE: Report on certificate is submitted and original applications (and attachments) of eligibles not selected for appointment returned.

☐ WE DESIRE FURTHER CERTIFICATION FOR VACANCIES.

SIGNATURE OF APPOINTING OFFICER

Frank Ramogido

TITLE

Chief, Personnel Branch

DATE

Feb. 26, 1974

A68

08/27/73

3342 210

FR 084.7

- 083.0

D 083.0

FR 082.4 TP

FR 081.9

CNS 080.8

FR 080.2

FR 080.1 TP

FR 079.6

FR 079.0 TP

FR 078.4 TP

FR 077.9

FR ~~077.5~~ TP

FR ⁷⁷076.8

FR 076.8

FR 075.7

DA 074.5

DA 075.7

FR 074.5

CNS 073.4

AB 073.4

EVANS JANET L

687622

UA 072.8

FR 071.1

D 070.6

NO DISPLACED EMPLOYEES

GISTER USED...JFA...411

CERTIFICATION FORM

CERTIFICATE NO.

073-3305 ~~SA~~ B

DATE ISSUED

SEP 20 1973

I. REQUEST

DEPARTMENT OR AGENCY

Treasury

BUREAU OR FIELD ESTABLISHMENT

Internal Revenue Service

REQUEST NO.

phone

DATE

9/11/73

This request should be submitted to the office of the Commission having jurisdiction over the work location named unless special prior agreement has been reached with the Commission.

VACANCIES, POSITION TITLE, SERIES CODE, GRADE (SALARY, IF UNGRADED) AND DUTY LOCATION

15 Revenue Representatives, GS 592-4 Brooklyn, NY. Dist.

TYPE OF APPOINTMENT

☒ Career or Career-Conditional

☐ Temporary not to Exceed

TO WHAT EXTENT WILL PERSONS APPOINTED BE REQUIRED TO TRAVEL?

☐ NOT AT ALL

☐ OCCASIONALLY

☐ FREQUENTLY

☐ D—FOR FILLING DEPARTMENTAL POSITIONS ONLY

☒ F—FOR FILLING FIELD POSITIONS ONLY

REQUEST RELATES SOLELY TO REQUIREMENTS OF THE MERIT PROMOTION PROGRAM

☐

AVAILABLE FOR WORK:

☒ IMMEDIATELY

☐ BY _____

REMARKS: (Give a description of duties where no standard specifications are published, and indicate any special qualifications required)

NO DISPLACED EMPLOYEES

EMC MAR 11 1974

ADDRESS WHERE CERTIFICATE IS TO BE SENT:

Department of Treasury
Internal Revenue Service
P.O. Box 380 GPO
Brooklyn, New York 11202

FOR FURTHER INFORMATION CONTACT:

B. Carey
(Name)

570-4977
(Tel.)

APPROVED BY:

Acting Chief, Personnel
(Name) Edna Manning (Title) Branch

NEW YORK LAB
RECEIVED
MAR 11 1974
330-72

73

II. CERTIFICATION

Please Review Instructions on Back of Form

TO REQUESTING OFFICE:

☒ The attached list of eligibles is provided in response to the above request OCT 11 1973

PLEASE RETURN WITHIN 21 DAYS OF DATE ISSUED OR BY _____

☐ Authority is granted to recruit through the open competitive examination for appointment to the position(s) indicated above.

Applications of persons recruited should be FORWARDED WITHIN 30 DAYS OF DATE ISSUED OR BY _____

☐ Authority is granted to fill the position(s) identified above under CS Reg. 316.402(A).

III. REPORT

Please Review Instructions on Back of Form

TO THE ISSUING OFFICE: Report on certificate is submitted and original applications (and attachments) of eligibles not selected for appointment returned.

☐ WE DESIRE FURTHER CERTIFICATION FOR _____ VACANCIES.

SIGNATURE OF APPOINTING OFFICER

Frank Ramogido

TITLE

Chief, Personnel Branch

DATE

Feb. 26, 1974

INSTRUCTIONS AND INFORMATION FOR AGENCY SELECTING AND APPOINTING OFFICIALS

GENERAL 70

The information on certificates of eligibles is for United States Government use only. Certificates, including qualification statements and other attached papers, are to be treated as privileged information. Certificates are to be returned to the issuing office WITHIN 21 DAYS OF DATE ISSUED.

When Authority to recruit is granted (Section II) applications of persons recruited under this authority are to be forwarded to the issuing office WITHIN 30 DAYS OF DATE ISSUED. Eligible applicants will be certified without further request. If an incomplete certificate is enclosed, all eligibles listed thereon must be considered concurrently with applicants recruited under this authority.

When authority is granted to recruit under CS Reg. 316.402(A) (Section II), in the absence of available eligibles, it may be used only after proper consideration has been given all eligibles on any certificate for the position(s) now outstanding or issued prior to the expiration of this authority. This authority is automatically cancelled (except for use in connection with commitments already made) upon your receipt of a complete certificate of eligibles for the position(s). In any case, this authority expires WITHIN 30 DAYS OF DATE ISSUED. In making appointments under this authority, you must adhere to procedures and standards set forth in Chapter 333 of the Federal Personnel Manual and in any outstanding Commission letters, agreements, etc. Any additional requirements are included under "Remarks".

Selections from certificates must be made in compliance with Section 3318 and other pertinent sections of Title 5, United States Code and regulations issued by the U.S. Civil Service Commission. See the Federal Personnel Manual (FPM) for further instructions—including FPM Supplement 296-31 which covers required pre-appointment checks. For candidates being selected from such examinations as the Federal Service Entrance Examination, graduate record examination scores, completion of education, and/or maintenance of grade point average, as appropriate, must be verified by the appointing official.

EXPLANATION OF KEY TERMS AND FOOTNOTES

The following key terms may appear adjacent to eligibles listed:

CP—Compensable disability preference
XP—10-point veteran preference

P—5-point veteran preference
TP—Tentative preference

#—Application not attached
*—To provide for declarations

Beside a particular eligible's name on a certificate, or on his qualifications statement, the Commission places footnotes or remarks to convey information about that person and, as appropriate, to alert the installation to necessary actions. Here are some footnotes and their explanations.

- Outstanding scholar.** Eligible in the Federal Service Entrance Examination who has qualified as an outstanding scholar (3.5 grade point average, or upper 10% graduating class). If appointed, special testing and reporting instructions must be observed.
- Completion education required.** Many examinations recognize students within 9 months of completing their education as tentatively qualified. Therefore, such an eligible may not enter on duty until he provides proof of completion of required education to the appointing officer.
- Under Age.** Appointing officials must verify that eligibles, whom they wish to hire, who are both under 18 years of age and not high school graduates, meet FPM Chapter 338 requirements.
- ADS-Tent.** Eligible, not entitled to veteran preference, who is from a State with quota filled or in excess and who apparently occupies a position in the apportioned departmental service under career appointment. His competitive selection to an apportioned job is subject to meeting FPM Chapter 338 requirements.
- Lost Certification.** An eligible who previously lost consideration for appointment, temporarily placed at top of list until his lost opportunity is made up.
- PL 83-121 (EOD date).** An eligible who, because of military service lost eligibility on a register from which a lower ranking eligible received a career or career-conditional appointment, receives special preference on the list. Under PL 83-121, if appointed, he must receive pay and seniority benefits based on EOD date of the lower ranking eligible earliest appointed.

REPORTING

Appropriate action symbols should be reported in the far left column of the certificate on the same line as the name of each eligible considered. Action symbols for use in reporting are listed below:

A—Selected
D—Declined
NS—Not Selected
FR—Failed to Reply
NC—Appointed by Noncompetitive Action
CRU—Communication Return Unclaimed

CE—Career or Career-Conditional Employee

TE—Temporary (or Indefinite) Employee

Already serving under the same appointing officer, in the same (or higher) grade, at the same duty location, and under the same (or preferable) type of appointment as that for which this certificate was issued. When these symbols are used, Title of Position, Grade and Duty Location must be listed as evidence that all of the above conditions are present.

The Commission encourages installations to notify schools above high school level when a student or recent graduate is selected for career appointment (FPM 332, B-11).

471

09/17/73

33058 ~~B~~

*apt'd to test Grand
Investigator on C73-1511*

*082.3 CP

687368 * LC

~~085.2 CP~~

629302

FR 083.4 CP COOPER SOL

628351

FR 080.1 TP

615962

FR 079.1

677981

A 079.0

616457

A 076.2

629302

FR 075.1

619807

per Mrs. Shore CSC

FIRST NAME HAS LOST CERTIFICATION.

REGISTER USED...JFA...411

CERTIFICATION FORM

472

CERTIFICATE NO.

3305 (2)

DATE ISSUED

I. REQUEST

DEPARTMENT OR AGENCY

Treasury

BUREAU OR FIELD ESTABLISHMENT

Internal Revenue Service

REQUEST NO.

73-78

DATE

9-11-73

U.S. Civil Service Commission
New York City Area Office
Federal Building
26 Federal Plaza
New York, New York 10007

This request should be submitted to the office of the Commission having jurisdiction over the work location named unless special prior agreement has been reached with the Commission.

(212) 264-9378

VACANCIES, POSITION TITLE, SERIES CODE, GRADE (SALARY, IF UNGRADED) AND DUTY LOCATION

12 Revenue Representatives GS-592-4 Brooklyn District

TYPE OF APPOINTMENT

☒ Career or Career-Conditional

☐ Temporary not to Exceed

TO WHAT EXTENT WILL PERSONS APPOINTED BE REQUIRED TO TRAVEL?

☐ NOT AT ALL

☐ OCCASIONALLY

☐ FREQUENTLY

☐ D—FOR FILLING DEPARTMENTAL POSITIONS ONLY

☒ F—FOR FILLING FIELD POSITIONS ONLY

REQUEST RELATES SOLELY TO REQUIREMENTS OF THE MERIT PROMOTION PROGRAM

☐

AVAILABLE FOR WORK:

☒ IMMEDIATELY

☐ BY

REMARKS: (Give a description of duties where no standard specifications are published, and indicate any special qualifications required)

This confirms telephone conversation of 9-11-73 between Ms. Canada of your office and Ms. Hendler this office.

Report
APPROVED

NO CLERICAL WORK

ADDRESS WHERE CERTIFICATE IS TO BE SENT:

Department of Treasury
Internal Revenue Service
P.O. Box 380 - GPO
Brooklyn, New York 11202 ATT: Chief, Personnel

FOR FURTHER INFORMATION CONTACT:

(Name) R. Hendler (Tel.) 596-4977

APPROVED BY:

Chief, Personnel

(Name) Frank Ramogido (Title) Branch

II. CERTIFICATION

Please Review Instructions on Back of Form

TO REQUESTING OFFICE:

☒ The attached list of eligibles is provided in response to the above request.

PLEASE RETURN WITHIN 21 DAYS OF DATE ISSUED OR BY

OCT 18 1973

☒ Authority is granted to recruit through the open competitive examination for appointment to the position(s) indicated above.

Applications of persons recruited should be FORWARDED WITHIN 30 DAYS OF DATE ISSUED OR BY

NOV 13 1973

☐ Authority is granted to fill the position(s) identified above under CS R 316.402(A).

III. REPORT

Please Review Instructions on Back of Form

TO THE ISSUING OFFICE: Report on certificate is submitted and original applications (and attachments) of eligibles not selected for appointment

☐ WE DESIRE FURTHER CERTIFICATION FOR VACANCIES.

SIGNATURE OF APPOINTING OFFICER

Frank Ramogido

TITLE

Chief, Personnel Branch

DATE

Feb. 26, 1974

473

09/24/73

~~725~~ 3305C

D 080.1 TP

D 079.1

G 077.3 TP

~~-075.1~~

K 072.3

REGISTER USED.. JFA 411

NO DISPLACED EMPLOYEES

Recruiting Authority issued with C-73-3305B